

No. 11805  
IN THE  
United States Circuit Court of Appeals  
FOR THE NINTH CIRCUIT

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EUGENE C. WATSON,

*Appellant,*

*vs.*

DECONHILL STEAMSHIP COMPANY, a corporation,

*Appellee.*

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APPELLANT'S OPENING BRIEF.

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**Jurisdictional Statement.**

This is an appeal in Admiralty from a final decree in favor of libelant in the United States District Court for the Southern District of California, Central Division, in an action for damages under the Jones Act (46 U. S. C. A. 688), and for maintenance and cure. Appellant sustained a fracture to his left forearm and injuries to his left groin, on or about the 2nd day of December, 1946, as a result of the negligence of the appellee while appellant was employed as a wiper upon the S. S. "Mesa Verde."

The pleadings in the District Court were a libel for maintenance and cure and damages [Ap. 3]; answer of respondent, Deconhill Steamship Company, a corporation [Ap. 8], and amendment to answer of respondent, Deconhill Steamship Company, a corporation [Ap. 13].

A trial was had before the United States District Court with the Honorable J. F. T. O'Connor, Judge presiding. After hearing the evidence, oral testimony and written documents, proctors for libelant and respondent argued the case. The Honorable Judge then found in favor of the libelant upon causes of action under the Jones Act and for maintenance and cure.

Findings of fact and conclusions of law were signed and filed on the 10th day of July, 1947 [Ap. 14]. Proposed modification of the findings of fact were filed by respondent, but were not requested to be made a part of the apostles on appeal.

A final decree was signed and entered on the 10th day of July, 1947 [Ap. 18].

The apostles on appeal, certified by the clerk of the District Court, included the following: petition for appeal with points and authorities [Ap. 20]; order allowing appeal without furnishing bond or costs [Ap. 22]; assignment of errors [Ap. 23]; citation and admission of service thereof [Ap. 2]; praecipe [Ap. 25]; affidavit and order in support of request for extension of time [Ap. 27], and notice of appeal [Ap. 28].

The jurisdiction of the District Court over actions, civil and maritime, involving claims for maintenance and cure and damages, arises from Article III, Sections 1 and 2 of the United States Constitution, which provides that the judicial power of the United States shall be vested in the Supreme Court and such inferior courts as Congress may establish, and that such power shall extend to all civil cause of Admiralty and maritime jurisdiction.

Jurisdiction of civil causes of Admiralty and maritime jurisdiction was vested in the courts of the United States

by the Act of Congress of September 24, 1789, Chapter 20, Sections 9, 11; Stat. L. 76, 78; 28 U. S. C. A. Section 371.

Appeals from final decrees in Admiralty are authorized by Section 128-a of the judicial code, as amended May 9, 1942, (56 Stat. L. 272, 28 U. S. C. A. Section 225), providing that the Circuit Court of Appeals shall have appellate jurisdiction to review, by appeal, final decisions.

### **Statement of the Case.**

On the 2nd day of December, 1946, the appellant was employed as a wiper on the S. S. "Mesa Verde," which vessel was at that time in the harbor of Honolulu, T. H. [Rep. Tr. 23]. Appellant was proceeding through a passage to descend the stairway to the steering engine room when he stepped into a bucket left upon said stairway, which was unlighted, and fell approximately eight or ten feet down the stairway to the deck of the engine steering room [Rep. Tr. 6, 7, 8, 41]. Appellant was knocked unconscious, sustained a fractured left arm and injuries to the left groin, as a result of the fall [Rep. Tr. 7, 9]. Appellant was advised to remain in his bunk and received treatment to the injured arm as the vessel proceeded from Honolulu to San Pedro, the port to which it was bound at the time of the injury [Rep. Tr. 11, 12, 13]. Upon appellant's arrival at San Pedro he was put in the hospital and his arm was placed in a cast [Rep. Tr. 13, 14]. Appellant's arm injury was diagnosed as a simple fracture of the middle third of the left ulna [Rep. Tr. 15].

In January, 1947, appellant was again hospitalized as a result of the injury to his groin for a period of about twelve days [Rep. Tr. 15, 16].

The cast was removed from appellant's arm on January 20, 1947 [Rep. Tr. 26].

Appellant was discharged as an outpatient from the United States Public Health Service on March 5, 1947 [Rep. Tr. 28]. Appellant's left arm still gave him discomfort at the time of the trial of this case on the 19th of June, 1947 [Rep. Tr. 16].

The District Court found that libelant's injuries were the result of his stepping into a bucket, negligently and carelessly left upon the second step of the stairway he was descending which precipitated him to the deck approximately ten feet below and that the negligent and careless leaving of a bucket upon the unlighted stairway leading to the steering engine room was a violation of the obligations respondent owed to libelant; and that the libelant sustained a fracture to his left forearm, bruises and abrasions to his body and a bruise to his left groin [Rep. Tr. 15].

From the evidence, the District Court concluded that the libelant was entitled to receive but \$100.00 damages for the injuries so sustained.

This appeal is directed solely to the insufficiency of damages.



### Assignment of Errors.

The assignment of errors upon which the appellant relies are set forth in the appendix to this brief, and are summarized in the following statement of points involved in this appeal:

a. Did the District Court err in awarding libelant and appellant a nominal sum as general damages for his injuries?

b. Is libelant and appellant entitled to recover a reasonable sum for general damages for a fractured arm and a severe bruise to his left groin, or is he entitled to recover but the nominal sum of \$100.00 although his injuries resulted solely from the negligence and carelessness of respondent and appellee?

### Outline of Argument.

I. This appeal is a trial *de novo*.

II. Libelant is entitled to recover a sum of at least \$2,000.00 general damages for the injuries sustained by him as a result of the negligence of respondent and appellee.

## ARGUMENT.

### I.

**This Appeal Is a Trial De Novo. No Authority Is Necessary to Establish This Point in the Ninth Circuit.**

### II.

**Libelant Is Entitled to Recover the Sum of at Least \$2,000.00 General Damages.**

The Ninth Circuit Court recognizes its power to modify an award of damages where there is no conflict with reference to the injuries in the lower court.

*The Andrea F. Luckenbach*, 78 F. (2d) 827, 9 C. C. A. 1935.

It is universally recognized that an appellate court may modify an inadequate award of the trial court by increasing the same to such amount as it deems adequate.

*New Orleans and C. R. Co. v. Schneider*, 60 Fed. 210;

*The Owen*, 43 Fed. Supp. 897.

The appellant in the case at bar sustained serious injuries. The fracture of his arm required his being hospitalized for several days, during which period his arm was placed in a cast. The cast remained on his fractured arm from approximately December 10, 1946, until January 20, 1947. Thereafter, the arm totally disabled him until March 5, 1947. For the period of approximately

eight days between the 2nd and 10th day of December, 1946, the appellant suffered great pain. During this period, his sole treatment was to bathe the injured arm with Epsom salts and hot water. There was no doctor aboard the vessel to give medical attendance.

It must be borne in mind in arriving at a reasonable amount of damages that the appellant received such injuries that resulted in his losing consciousness for a period of time.

The injury to the appellant's groin required his being hospitalized for approximately twelve days, in addition to the period of time he was hospitalized for the fractured arm. The injury to the groin still was annoying to the appellant six months after the date of his injury, while the pain from the fracture of his left arm did not subside until approximately three to four months.

The Court may take judicial notice of the fact that a dollar at the present date will purchase but approximately one-third of the articles it would have purchased ten years ago, and that an award of damages in the sum of \$3,000.00 at the present date would equal an award of \$1,000.00, approximately ten years ago.

In view of the fact that there is no conflict in the evidence with reference to the injuries and the disability resulting therefrom, and because the damages so awarded by the District Court are strikingly inadequate, this Honorable Court should exercise its power to modify the decree granting the appellant a reasonable award for damages.

Conclusion.

It is respectfully submitted that the appellant herein, upon the undisputed evidence, is entitled to an award for general damages in excess of the sum of \$2,000.00, and that the decree of the United States District Court herein should be modified in accordance therewith.

Respectfully submitted,

DAVID A. FALL,

*Proctor for Appellant.*

## APPENDIX.

### Assignment of Errors.

#### I.

The District Court erred in finding that the libelant sustained damages for pain and suffering by reason of his said injuries in the sum of one hundred dollars (\$100.00).

#### II.

The District Court erred in concluding that libelant was entitled to receive but one hundred dollars (\$100.00), for pain and suffering resulting from a fracture of his left arm, bruises and abrasions to his body and a bruise to his left groin.

#### III.

The District Court erred in not finding that the libelant sustained damages for pain and suffering by reason of a fractured arm, bruises and abrasions to his body, and a bruise to his left groin, in the sum of at least two thousand dollars (\$2,000.00).

#### IV.

The District Court erred in not concluding that libelant was entitled to recover the sum of two thousand dollars (\$2,000.00), for pain and suffering.

The District Court erred in not entering a final decree in favor of libelant and against respondent, in the sum of two thousand three hundred fifty-two dollars (\$2,352.00).

